



DEPARTMENT OF HEALTH & HUMAN SERVICES

Food and Drug Administration
Rockville MD 20857

FEB 24 2006

Re: Aptivus
Docket No. 2006E-0033

The Honorable Jon Dudas
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
Box Pat. Ext.
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Director Dudas:

This is in regard to the application for patent term extension for U.S. Patent No. 5,852,195 filed by Pharmacia & Upjohn Company, LLC under 35 U.S.C. § 156. The human drug product claimed by the patent is Aptivus (tipranavir), which was assigned NDA No. 21-814.

A review of the Food and Drug Administration's official records indicates that this product was subject to a regulatory review period before its commercial marketing or use, as required under 35 U.S.C. § 156(a)(4). Our records also indicate that it represents the first permitted commercial marketing or use of the product, as defined under 35 U.S.C. § 156(f)(1), and interpreted by the courts in *Glaxo Operations UK Ltd. v. Quigg*, 706 F. Supp. 1224 (E.D. Va. 1989), *aff'd*, 894 F. 2d 392 (Fed. Cir. 1990).

The NDA was approved on June 22, 2005, which makes the submission of the patent term extension application on August 16, 2005, timely within the meaning of 35 U.S.C. § 156(d)(1).

Should you conclude that the subject patent is eligible for patent term extension, please advise us accordingly. As required by 35 U.S.C. § 156(d)(2)(A) we will then determine the applicable regulatory review period, publish the determination in the *Federal Register*, and notify you of our determination.

Please let me know if we can be of further assistance.

Sincerely yours,

Jane A. Axelrad

Associate Director for Policy
Center for Drug Evaluation and Research

cc: Alan Stempel
Boehringer Ingelheim Pharmaceuticals, Inc.
Senior Counsel, Intellectual Property
900 Ridgebury Rd.
Ridgefield, CT 06877